

STATE OF VERMONT

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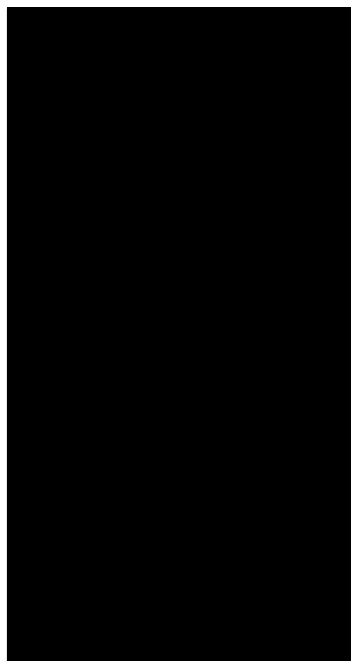
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STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Alexia Wilson)	
Charging Party)	
)	
v.)	HRC Charge No. HV11-0021
)	HUD# 01-11-106-8
)	
Margaret Jackson)	
Responding Party)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following Order:

1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Margaret Jackson, the Respondent, illegally discriminated against Alexia Wilson, the Charging Party, in violation of Vermont's Fair Housing and Public Accommodations Act on the grounds of minor children.

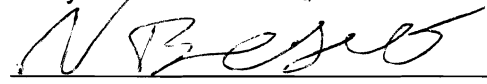
Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mercedes Mack	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>


Entry: ☒ Reasonable Grounds ☐ Motion failed

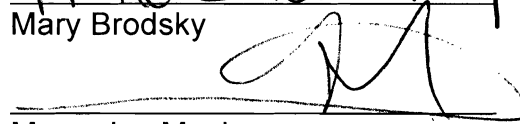
Dated at Winooski, Vermont, this 16th day of June, 2011.

BY: HUMAN RIGHTS COMMISSION


Mary Marzec-Gerriot, Chair


Nathan Besio


Mary Brodsky


Mercedes Mack


Donald Vickers

INVESTIGATIVE REPORT

HRC Case No.: HV11-0020

HUD Case No.: 01-11-0106-8

CHARGING PARTY: Alexia Wilson

RESPONDING PARTY: Margaret Rose Jackson

CHARGE: housing – minor children

Summary of Charge: On December 21, 2011, Ms. Wilson filed a housing discrimination charge alleging that she had been discriminated against by Ms. Jackson and Mr. LaRoque because of the presence of a minor child in her dwelling. Specifically, she stated that the respondents made discriminatory statements against her in reference to normal noise made by her two-year old grandson who resides with her and that she was forced to move out of her apartment because of the respondents' intolerance of normal toddler noise.

Summary of Response:

On January 26, 2011, Ms. Jackson, the landlord who resides in Florida, denied that she discriminated against Ms. Wilson. Specifically, she stated that she and Ms. Wilson made an agreement as a condition to renting the unit to Ms. Wilson and that Ms. Wilson violated the agreement. The alleged agreement concerned the amount of time Ms. Wilson and her grandson would be in the apartment during the day. Ms. Jackson was concerned about how excessive noise would affect Mr. LaRoque's health and his need for quiet in order to recuperate from a serious illness. Ms. Jackson alleged that Ms. Wilson's failure to follow the terms of their agreement and that her failure to do so resulted in too much noise for Mr. LaRoque to recover from his serious illness.

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find there are **reasonable grounds** to believe that Ms. Jackson violated 9

V.S.A. §4503(2) and (3) of the Vermont Fair Housing and Public Accommodations Act.

INTERVIEWS

3/15/11 – Ms. Alexia Wilson

3/22/11 – Ms. Rose Jackson (via phone)

3/23/11 – Mr. Roy LaRoque

3/30/11 – Paulette Fedorishen (childcare provider at Little Shepherd day Care Center)

DOCUMENTS

12/21/10 – Discrimination Charge

1/20/11 - LaRoque Response to Charge

1/26/11 - Jackson Response to Charge

3/16/11 - A packet of Emails and various other documents provided by Charging Party (from 3/30/10 - 7/29/10)

3/30/10 - Note given to Ms. Wilson from Ms. Jackson (2 versions)

3/23/11 - Releases from Ms. Wilson to HRC

ELEMENTS OF PROOF (Prima Facie Case)

9 V.S.A §4503(2)

- 1) Ms. Wilson is a member of a protected class under Vermont's fair housing laws
- 2) Ms. Wilson was subjected to an adverse housing action by Ms. Jackson
- 3) The adverse housing action was due to her membership in a protected class

9 V.S.A. § 4503 (3) is a strict liability statute; all that is required to establish liability is that the respondent "made, printed or published **any** notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates **any** preference, limitation or discrimination . . . because a person intends to occupy a dwelling with one or more minor children . . . " (emphasis added).

FACTS

Undisputed Facts

Ms. Jackson resides in Florida. She is presently and has been a licensed Florida realtor for about 15 years. She owns several rental properties in Florida and one rental property in Swanton, Vermont. (The Vermont property is where Ms. Wilson resided and where Mr. LaRoque still resides.) Ms. Jackson has not returned to Vermont for several years.

The Swanton property owned by Ms. Jackson was originally a single-family house that was converted to a two-family dwelling prior to Ms. Jackson's purchase of the property approximately five years ago. Mr. LaRoque resides in the downstairs portion of the property and has a small business in a portion of the downstairs property. He has been a tenant of Ms. Jackson's for approximately three years.

On or about March 1, 2010, Ms. Jackson agreed to rent the upstairs unit to Ms. Wilson. When Ms. Wilson was negotiating a rental agreement with Ms. Jackson she and her grandson resided in Texas. Ms. Wilson had a local friend help her arrange for the rental. Ms. Wilson and her grandson moved into Ms. Jackson's upper unit on or about March 15, 2010. Approximately two weeks later, Ms. Jackson informed Ms. Wilson that she needed to move out within 30 days due to the level of noise that was coming from her apartment. Over the next few months Ms. Jackson contacted Ms. Wilson many times to check on and encourage Ms. Wilson's progress in vacating the apartment. On March 30, 2010, and several times after that date, Ms. Jackson told Ms. Wilson that she wanted to show Ms. Wilson's apartment to a prospective tenant.

On or about April 28, 2010, Ms. Wilson received a warning from Ms. Jackson's attorney stating that if Ms. Wilson did not eliminate the

excessive noise from her apartment she would be evicted. On or about July 2, 2010, Ms. Wilson received an eviction notice for unpaid rent and utilities. Ms. Wilson moved out of the apartment on or about July 29, 2010.

Statements by Alexia Wilson

Ms. Wilson is a 45-year-old woman who has custody of her two-year old grandson. In February 2010, she responded to a Craigslist ad for a one-bedroom upstairs apartment in Swanton, Vermont.¹ The apartment is owned by Ms. Jackson. Both parties spoke to each other on the phone prior to Ms. Wilson moving into the unit. Ms. Wilson said that Ms. Jackson told her that a “nice man” lived in the downstairs apartment and that he had some major health issues. Ms. Wilson told this investigation that nothing was said about his need for quiet or an acceptable noise level in the upstairs apartment. Ms. Wilson did say that she had told Ms. Jackson that her grandson, Anthony, would be in daycare once she started work. Ms. Wilson told this investigation that Anthony was in daycare shortly after moving to Vermont. He attended “most week days” from 12:00 – 6:00. She said that it took a while to get him into a daycare program, so until he could get into a formal daycare program he went to a babysitter from 11- 6 on weekdays. On or about April 10, 2010, he was accepted at Little Shepherd Daycare; he was usually there from 8 AM – 6 PM on weekdays.

Ms. Wilson also stated that she told Ms. Jackson that she would be attending school.²

Ms. Wilson stated that she agreed to pay \$500 a month rent and \$125 a month for utilities. Since she lived in Texas at the time, she

¹ Ms. Wilson said that despite being advertised as a one-bedroom apartment, it was in fact an efficiency apartment.

² Ms. Wilson said she was referring to “on-line” school.

had her boyfriend, who lived in Plattsburgh, New York, deliver a \$1750 money order to Mr. LaRoque, the downstairs tenant. Ms. Wilson believed that the check covered March and April rent (\$1000), a security deposit (\$500), a utility deposit (\$125) and one month's utilities (\$125).³

On or about March 30, 2010, Ms. Wilson found a note attached to her door. The note indicated that due to the amount of noise in her apartment caused by her grandson she had to move within 30 days. (Attached #1.) Ms. Wilson stated that she also received this note via snail mail and email. Ms. Wilson told this investigation that when she received the note she attempted to call Ms. Jackson and when she reached her, Ms. Jackson said that she could not talk because she was in the middle of a party. Ms. Wilson said she then tried to call 3 or 4 more times over the next couple days to discuss the note, but was unable to reach Ms. Jackson. At some point she said she asked Mr. LaRoque about the note because it appeared he had taped it to her door for Ms. Jackson. She said his response was that he did not know anything about it and "he did not want to get in the middle of it."⁴

On the same day the note was posted, Mr. LaRoque sent Ms. Wilson an email that contained a list of a number of rentals that were available in the St Albans area.

³ Ms. Wilson told this investigation that Ms. Jackson had told her not to worry about March's utilities. Based on that statement, the utilities payment made prior to he moving in, would have been for April's utilities.

⁴ Ms. Wilson pointed out to this investigation that Mr. LaRoque had to have known something about the note since Ms. Jackson could have only thought that there was too much noise based on a complaint from him. Additionally, he had attached his own handwritten note to Ms. Jackson's note.

Ms. Wilson denied that her grandson made excessive noise. She said that when her grandson was home he behaved like a normal toddler and slept about 12 hours a night.⁵

Ms. Wilson provided this investigation with a number of email exchanges she had with Ms. Jackson and/or Mr. LaRoque regarding the noise and Ms. Jackson's desire that Ms. Wilson move out of the apartment. Reading these emails helps express the nature of the relationships between Ms. Wilson, Mr. LaRoque and Ms. Jackson. These emails also helped this investigation sort out questions of credibility, timing of events and the context of some statements made by the parties. Appendix A is a summary of the emails pertinent to this investigation.

Additional Information from Interview:

This investigation asked Ms. Wilson if she answered her cell phone when Ms. Jackson tried to contact her. She stated that Ms. Jackson never attempted to call her.

Ms. Wilson stated that there were times that Mr. LaRoque was loud late at night. She said his noise occurred one or two times a month and at times went until 2 AM. This investigation asked her if she ever spoke him about it; she replied she had not. She also said that she just went to sleep.

⁵ Ms. Wilson produced a note allegedly written by Anthony's babysitter on 4/12/10. The note stated that the sitter had cared for Anthony for about two weeks and during that time he was a "well behaved" and "mellow" child. Ms. Wilson did not have contact information for the sitter and therefore this investigation could not substantiate the authenticity of it. However, this investigation did speak with one of Anthony's daycare providers, Paulette Fedorishen, who stated that Anthony was a typical two-year old. She said that sometimes he screeched, for instance when another child took a toy he was playing with, but nothing out of the ordinary. She stated that he started attending in April 2010 every weekday from 9 – 5.

Ms. Wilson said that she gave Mr. LaRoque \$20 cash each month that she lived there except in July because he told her not to bother paying him for that month.

Ms. Wilson said she never offered to put carpet runners down to help reduce the sound. She stated that the apartment is already carpeted.

Ms. Wilson told this investigation that her grandson did not scream regularly for several minutes. She stated that he slept with her. This investigation asked her if she ever had to take her grandson to the emergency room because of a dislocated arm. She stated that she did and it is a problem that is not uncommon to toddlers. This situation was not because she yanked him by his arm in an abusive manner as Mr. LaRoque alleged. Ms. Wilson stated that when she saw in Mr. LaRoque's response to this charge, that he alleged he had been contacted by Child Protective Services (CPS), she called Department of Children and Families (DCF) in St. Albans and asked if there was an investigation into her treatment of her grandson. She was told by Ms. Tracey Casanova, a CPS worker, that there was not an investigation.⁶ Ms. Wilson told this investigation that Ms. Jackson never mentioned Mr. LaRoque's health and the need for quiet as part of any condition regarding her moving into the apartment. This investigation asked Ms. Wilson if she had ever smoked in her apartment. She at first stated that she had not. Upon further clarification she said that maybe she

⁶ This investigation asked Ms. Wilson if she would provide a release for HRC to speak with DCF. She provided a release for HRC to speak to DCF and the daycare center her grandson attends. After reading Mr. LaRoque's response to the HRC charge, in which he accused her of being investigated by CPS, she called CPS. Because she had never been contacted by CPS she was very concerned about Mr. LaRoque's allegation. She was told there was no investigation. Ms. Wilson provided this investigation with a release to speak to CPS in order to verify the accuracy of the situation. Jennifer Harris, the supervisor of investigations at the St. Albans CPS office, told this investigation that she checked their records and "did not find anything on Ms. Wilson— no report and no investigation."

had once. She explained if she did smoke in the apartment, she would have leaned out the window, because she does not smoke in the same room as her grandson.

Ms. Wilson admits that she was behind on rent and utilities when she moved out of the apartment. She admitted that even when the utilities and security deposit were applied to money owed Ms. Jackson there was still an unpaid balance. This investigation can verify that the amount owed is at least \$650 but most likely under \$1000. It is important to note that on March 30, 2010, when Ms. Wilson was first told she needed to move out, she was not behind in her rent and in fact had prepaid some of the rent and utilities.

When asked by this investigation if she left the apartment in the same condition as it was in when she moved in, Ms. Wilson said, yes she had. After this investigation mentioned that the person who cleaned the apartment had taken pictures of the apartment before cleaning it, Ms. Wilson said that maybe it was not as clean as when she moved in to it.⁷

Statements by Ms. Jackson

Ms. Jackson told this investigation numerous times that prior to agreeing to rent to Ms. Wilson, "we made sure that she understood Ray's medical condition and that noise and smoking could not be allowed in the apartment. She (Ms. Wilson) fully agreed to ALL the terms."

This investigation asked Ms. Jackson if she was aware of a landlord's legal obligations regarding eviction. She stated that she was

⁷ The issue of how clean the apartment was when Ms. Wilson moved out is not directly part of the elements of a discrimination investigation. However, questions like this help serve as a means for an investigation to determine the accuracy of answers provided by the various parties to questions that are directly related to the discrimination issues.

and that she believed she followed them in this case. She stated that originally she was only “recommending” that Ms. Wilson leave and that it was not an eviction because she offered to give her money back. She further stated “I was going to help her.”⁸

Ms. Jackson explained that when she posted the ad on Craigslist she had a number of people who wanted the apartment. She rented to Ms. Wilson because Mr. LaRoque wanted a tenant who would not be home during the day, due to his need for rest while recovering from a serious health problem. “She (Ms. Wilson) told me they would be away during the day.” Ms. Jackson also said that she discussed who would rent the apartment with Mr. LaRoque prior to offering it to Ms. Wilson.

Ms. Jackson said that she never told Ms. Wilson that she did not have to pay for March utilities. Ms. Jackson further explained that she had so many people wanting the apartment Ms. Wilson told her that she would pay for whole month of March.

This investigation asked Ms. Jackson if Ms. Wilson said she would be studying to become a medical examiner or that she would be attending school. Ms. Jackson said, “Alexia said she would be away all day at class and the child would be in day care all day – a done deal.”

Ms. Jackson stated that she never heard the noise that Mr. LaRoque complained about. Ms. Jackson said she sent Ms. Wilson the March 30, 2010 note after “Ray” told her “Rose it (the noise) goes on night and day – loud. Running and heavy walking – screaming bloody screaming – he was worried.” Ms. Jackson said that Ray contacted her about the noise very soon after Ms. Wilson moved into the unit. Ms. Jackson admitted that she wrote the March 30, 2010 note that stated

⁸ During the course of this investigation’s interview of Ms. Jackson, she stated many times that she believed she “was only trying to help Alexia” but that Alexia did not want her help. Ms. Jackson felt her actions were not wrong because she was “just helping” Ms. Wilson.

that Ms. Wilson had assured Ms. Jackson that the “child would NOT be running around but be in a playpen” (emphasis in original) and would be in daycare. Ms. Jackson’s also stated in the note “I am told that the child is running around and screaming day and night. This is unacceptable, but I guess that is what kids do.”⁹ This investigation asked Ms. Jackson if Mr. LaRoque ever contacted the police about the noise. She stated that she believed he called some authority – maybe Child Protective Services. She also said she was not sure if Mr. LaRoque ever went up to Ms. Wilson’s apartment or contacted her while the noise was occurring. Later Ms. Jackson said that Mr. LaRoque did try to talk to Ms. Wilson about the noise at some point.

This investigation asked Ms. Jackson why she only specifically referred to the noise caused by the child in her March 30, 2010 note if there was allegedly other noise. Her response was “I don’t know. The screaming was eerie.” Ms. Jackson said that she asked Mr. LaRoque to talk with Ms. Wilson to try and resolve the noise issue and that she also tried to talk with Ms. Wilson.

Ms. Jackson admitted that she had no first hand knowledge of the Anthony’s daycare schedule. She also admitted that she was not sure what Mr. LaRoque’s serious medical condition was or when he was hospitalized. She knew that he needed oxygen for a period of time.

Ms. Jackson agreed that Ms. Wilson had asked her not to email her. Ms. Jackson said that she continued to email Ms. Wilson because she “wanted to reach Alexia and she was not responding to her phone – it was serious with Ray.” This investigation asked Ms. Jackson why she sent the 4/28/10 notice that only warned Ms. Wilson to be quieter,

⁹ These sentences were not in one of the versions of the March 30th notes sent to Ms. Wilson. Ms. Wilson is not sure which version was taped to her door and which one was mailed to her.

rather than an eviction notice. Ms. Jackson said, "because we were trying to work it out – she said she wanted to stay and intended to stay." Ms. Jackson also claimed that Ms. Wilson told her that "she would not be there (at the apartment) 24/7."

Ms. Jackson admitted that she sent numerous emails telling Ms. Jackson she needed to move out and that she wanted to show the apartment. Ms. Jackson said that she "wanted Alexia's cooperation" in the process. On July 2, 2010, Ms. Jackson had her attorney send Ms. Wilson a Notice of Eviction for failure to pay rent.

This investigation asked Ms. Jackson about the nature of her relationship with Mr. LaRoque as it relates to her Vermont rental property. Ms. Jackson stated the following:

- 1) He is not a property manager
- 2) He is not paid nor does he receive any compensation for helping her out occasionally
- 3) He cannot act on Ms. Jackson's behalf except that he can call service people - but Ms. Jackson pays the bills
- 4) Ms. Jackson asks for Mr. LaRoque's approval of prospective tenants
- 5) He usually does not handle money because he does not want to - but occasionally he has made deposits into Ms. Jackson's local bank account¹⁰
- 6) Access to the circuit breaker box for both units is through his apartment

Additional Information from Interview:

In her response Ms. Jackson stated that there had been a family consisting of a father and two daughters (ages approximately 8 and 10 years), who had lived above Mr. LaRoque and there were no noise complaints. This investigation asked Ms. Jackson if she had contact

¹⁰ (To pay rent tenants usually make the direct deposits into Ms. Jackson's bank account themselves.)

information for those tenants – she did not. She recalled that they only lived there a few months.

Ms. Jackson stated in her response that Ms. Wilson and her grandson were in the apartment “24/7.” This investigation asked if she knew that was true. Ms. Jackson stated, “No, I was not there but she had no job to go to – she was there a lot maybe not 24/7.”

Ms. Jackson also stated in her response that the apartment was “a disaster” when Ms. Wilson vacated it. She also told this investigation that it was “trashed” by Ms. Wilson. This investigation asked how she knew it was trashed and Ms. Jackson said she had pictures from the person who cleaned the apartment. This investigation examined those pictures and found that while the apartment was not as clean as an apartment could be, there was no evidence of it being “trashed.” Ms. Jackson said she paid the person who cleaned the apartment \$121.50. She also said that the cleaning person “spent days getting it back in shape.”¹¹

Ms. Jackson stated in her response that she “immediately” contacted an electrician when Ms. Wilson complained about her electricity constantly going out. However, Ms. Wilson’s emails indicate that she first contacted Ms. Jackson on 6/29/11 and an electrician did not come to fix the problem¹² until 7/30/11.

Ms. Jackson told this investigation that throughout the process, she “was just trying to resolve a situation that was not working out.”

Ms. Jackson stated in her response that she was “out \$2500.” However, this investigation reviewed the financial information and

¹¹ Mr. LaRoque told this investigation that the cleaning person charged \$15 an hour. If she was paid \$12.50 as Ms. Jackson told this investigation, that amounts to a little over 8 hours of cleaning.

¹² Ms. Jackson minimized the electrical problems stating that the problems were due to Ms. Wilson overloading the system. However, Mr. LaRoque stated that major electrical work was done because the old wiring and electrical box were not adequate.

believes the amount owed to Ms. Jackson by Ms. Wilson is closer to \$700.¹³

Statements by Ray LaRoque

Mr. LaRoque stated that he had resided in the apartment below Ms. Wilson's unit for about three years. He told this investigation that in December 2009 he experienced congestive heart failure and then in January 2010 he was in intensive care due to an embolism. After he returned home he was on oxygen for about three months. He characterized Ms. Jackson as a good, responsive and compassionate landlord.

He said he never spoke to Ms. Wilson prior to when she actually moved to the upstairs unit. When this investigation asked Mr. LaRoque if he had influence over who Ms. Jackson chose for tenants he stated that Ms. Jackson "put whoever she wants" into the apartment.

Mr. LaRoque admitted that he gave Ms. Wilson the keys to the unit and deposited Ms. Wilson's \$1700 check into Ms. Jackson's account.¹⁴ He told this investigation that he never places ads for the upstairs apartment and that he is not compensated for the help he gives Ms. Jackson. Mr. LaRoque added, "as a matter of fact my rent was recently raised." He said at one time he had a set of keys for the upstairs unit but now another neighbor has the keys. Mr. LaRoque

¹³ HRC does not have jurisdiction over landlord tenant financial disputes. However, it is important to remember that Ms. Wilson was not in arrears until after the alleged discriminatory notice was taped on her door and mailed to her. Since Ms. Jackson and Mr. LaRoque both raised the arrears issue in their responses, this investigation reviewed and checked the accuracy of the statements made by the respondents as this can help an investigation gauge other information and allegations made by parties.

¹⁴ Mr. LaRoque stated that he has only deposited rent related money for Ms. Jackson a couple of times since he has been her tenant. One of the emails provided to this investigation includes Mr. LaRoque stating that he will accept the rent money this once but he did not want to be in that position of handling Ms. Jackson's financial matters.

stated that he does contact service providers for Ms. Jackson when there is a need, but that she pays them directly. Mr. LaRoque added that he made it clear to Ms. Jackson that he did not want to be the “go between” in the situation regarding Ms. Wilson’s noise. He said that he even emailed both of them copies of a Vermont landlord/tenant’s rights publications, hoping it might help them resolve their issues.

Mr. LaRoque told this investigation that he first spoke to Ms. Wilson about the noise four or five days after she moved into the apartment. He however said that mostly he spoke to “Rose” about the noise. He told Ms. Jackson that “it was not as quiet as it should be and that it seemed like a tremendous amount of noise.” He said the noise was mostly Ms. Wilson’s and he asked Ms. Wilson if she could keep it quiet. Mr. LaRoque described the noise as “startling” and that it included Ms. Wilson screaming at Anthony and very loud music. He said it sounded like a “Clydesdale” up there but that he tried to say this to Ms. Wilson in a delicate way.

Mr. LaRoque further stated that in the middle of the night Anthony would scream and Ms. Wilson would then scream “shut-up.” He said it bothered him enough to call Child Protective Services.¹⁵ Mr. LaRoque said he never called the police about the noise.

He explained that he thought since the house had originally been a single family home and did not have any special sound buffering materials between the units, the noise “can get out of hand.” (Though he also said in the past he has never had any noise problem with other upstairs tenant.)

¹⁵ In his response to this charge Mr. LaRoque stated that “prior to Ms. Wilson moving out **I was contacted by Child Protective Services** (CPS) (emphasis added) here in Vermont as they were investigating a complaint about Ms. Wilson and her grandson.” Mr. LaRoque admitted in the investigative interview that CPS contacted him because he had first called them and they were returning his call. He emphasized to this investigation that what he stated in his response as technically true, CPS did contact him.

He stated that a man and his two daughters lived in the upstairs apartment for about a year. The two girls were about 8 and 10 years old and were there about 3 days a week and every other weekend. There were no noise problems.

Mr. LaRoque had indicated in his 4/1/10 email to Ms. Wilson that the noise he heard was "simple kid fashion." This investigation commented to Mr. LaRoque that it appeared that the noise he was upset with at that point was normal child noise. Mr. LaRoque explained that he can accept "normal kid noise" and that some of the noise was normal; but much of it was not. He again mentioned to this investigation that he heard loud and frequent screaming by the child and Ms. Wilson. He also said that the noise from Ms. Wilson's apartment "prevented him from acquiring the peace and quiet he needed for a speedy recovery after such (sic) the medical problems he had encountered and Ms. Wilson was aware of this." He further stated, "At times Ms. Wilson "even had her boyfriend, Steve Mitchell, who actually has his own house stay here over night."¹⁶

Mr. LaRoque stated in his response that he could not "validate or discredit" Ms. Wilson's statements about Anthony's daycare attendance.

In Ms. Wilson's discrimination charge she stated that, "On March 30, 2010 . . . I found an envelope taped to the door of my apartment with a letter from Ms. Jackson telling me that we had 30 days to vacate the apartment."¹⁷ In response to this element of the charge Mr. LaRoque replied, "I am unaware of the letter Ms. Wilson speaks."

¹⁶ This fact is not an element of the discrimination allegation. However, each parties' statements regarding the whole of the situation helps this investigation understand the standards each party uses to determine acceptable and unacceptable behavior.

¹⁷ The note taped to Ms. Wilson's door clearly was emailed to Mr. LaRoque by Ms. Jackson. A note from Mr. LaRoque was attached to the note taped on her door. The

Additionally, in her charge Ms. Wilson stated that “later in the day on March 30, 2010, after Ms. Jackson’s letter had been taped to my door, Mr. LaRoque sent me an email with listings of other apartments available in Franklin County.” Mr. LaRoque’s response to this element of the charge was, “No comment on this claim.” This investigation asked him during the investigative interview if he had ever sent Ms. Wilson a list of available apartments. He said that he had not. When this investigation showed him the email of multiple apartment rental listings sent from his email address he said that maybe he had sent it.

Additional Information from Investigative Interview

Mr. LaRoque stated that the electrician who inspected the wiring for the house discovered major problems with the wiring. He stated that the electrician was there for three days and replaced the box and some of the old wiring.

Mr. LaRoque stated that Ms. Jackson asked him to arrange for his cleaning person to clean Ms. Wilson’s apartment after she moved out; which he did. He told this investigation that it took her two days to clean the apartment.

Mr. LaRoque stated that he paid for the garbage collection. and that it cost \$20 a month for pick-up twice a month and \$37 a month for weekly. He said he usually only had pick-up twice a month but that when Ms. Wilson moved in he increased that to every week. He told this investigation that Ms. Wilson only paid him one time for her share of the monthly garbage collection.

Statements by the three parties

note stated, “Alexia, Rose asked me to give you this as she tried your email and it came back to her. (I hate being in the middle) – Ray”

This investigation found that during the course all three investigative interviews each party made contradictory statements and/or embellished or omitted portions of some events relating to this case. Given this situation, this investigation was unable to ascertain what actually happened in many of the events of this case -- in particular, whether the level of noise created by Ms. Wilson's grandson was excessive or within the normal range for a family of one adult and one toddler.

ANALYSIS

Vermont's Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503(20(3) states:

It shall be unlawful for any person:

(2) To discriminate against, or to harass any person in the terms, conditions or privileges of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, age, marital status, gender identity, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation or discrimination based on race, sex, sexual orientation, age, marital status, gender identity, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

Fair housing laws are remedial in nature and therefore are to be construed broadly by the courts. Cabrea v. Jakabovitz, 24 F.3d 372, 388 (2d Cir.), cert. denied, 115 S. Ct.205 (1994).

9 V.S.A. § 4503 (3)

This portion of fair housing law is commonly referred to as the “statements against” provision. Unlike the other provisions of fair housing law the “statements against” provision is a strict liability portion of the statute; all that is required to establish liability is that the respondent “made, printed or published **any** notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates **any** preference, limitation or discrimination . . . because a person intends to occupy a dwelling with one or more minor children . . . ” (emphasis added).¹⁸ This provision “simply bans the making of any housing related notice, statement, or advertisement that ‘indicates any preference, limitation, or discrimination’ regardless of the actor’s reason for communicating in this way.” Schwemm’s Housing Discrimination – Law and Litigation, §15-1, pg. 15-2, 2010. The courts have held that if the statement indicates discrimination to an “ordinary reader” “with respect to the . . . rental of a dwelling”¹⁹ then the statement violates this provision of fair housing law.²⁰

Schwemm further explains that there are two groups that the “statements against” provision applies to – newspapers/other advertising media and “persons engaged in the . . . rental of housing who themselves make, print, or publish discriminatory notices statements . . . or who cause others to make, print or publish discriminatory . . . statements.” (Id. at §15:1, pg 15-3.)

¹⁸ This provision of the federal Fair Housing Act is considered so important that it is the one provision that even properties that are exempt from the other provisions of the Act, must abide by this provision.

¹⁹ Ragin v. New York Times Co., 923 F.2d 999 (2d Cir. 1991) (citing U.S. v. Hunter, 459 F.2d 205, 215 (4th Cir. 1972)).

²⁰ In this case it is important to consider the events that had transpired at the time the statement was made and not the allegations regarding financial matters that happened during the subsequent 3 months.

Ms. Jackson - Ms. Wilson supplied this investigation with a letter authored by Ms. Jackson. This letter constitutes a written "statement" under fair housing law by Ms. Jackson. The letter indicates that due to the noise being caused by her grandson, Ms. Wilson had 30 days to move out of the apartment she had just moved into 2 weeks prior. Ms. Jackson's letter identifies that noise caused by the grandson's running around and not being in his playpen and the child's "screaming day and night" was unacceptable. However, she then stated that she guessed "that is what kids do." This investigation believes an ordinary reader of this letter would conclude that this letter is discriminatory in nature. The letter reflects a preference by Ms. Jackson to not have a person with a minor child who does "what kids do," residing in Ms. Jackson's upstairs apartment. Ms. Jackson's letter is a violation of the "statements against" provision of fair housing law.

9 V.S.A §4503(2)

Elements of Proof

- 1) Ms. Wilson is a member of a protected class under Vermont's fair housing laws
- 2) Ms. Wilson was subjected to an adverse housing by Ms. Jackson
- 3) The adverse housing action was due to her membership in a protected class

To prevail in this portion of her charge Ms. Wilson must prove her allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal fair Housing Act in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995).

Whether Ms. Wilson is a member of a protected class

Ms. Wilson resided with her two-year old grandson during her tenancy in Ms. Jackson's upper level apartment in Swanton, Vermont. Therefore she is a member of a protected class under Vermont's fair housing laws.

Whether either respondent caused Ms. Wilson to be subjected to an adverse housing action

On March 30, 2010, approximately two weeks after Ms. Wilson had moved into her apartment she was told she had to move out of her apartment within 30 days because of the noise being made in her apartment. Ms. Jackson told Ms. Wilson that she was advertising the apartment to find a new tenant. Ms. Jackson wrote a note to Ms. Wilson on March 30, 2010 stating "you were selected to rent here because you said you were going to be away most of the time and the child would be in daycare. When at home you assured me that the child would NOT be running around but in a play pen . . . I am giving you 30 days to vacate. . . . I am advertising for a new tenant and I hope that you will work with me as far as showing it." Then in what appears to be the same letter only without this additional paragraph Ms. Jackson states, "I am told that the child is running around and screaming day and night. This is unacceptable, but I guess that is what kids do." ²¹

²¹ Ms. Wilson said she received three copies of the 3/30/10, letter two copies had the extra paragraph and one did not. One copy was posted on her door by Mr. LaRoque, per Ms. Jackson's request; another was emailed to Ms. Wilson; and, a third was sent via regular mail. It is uncertain that means of delivery was used to deliver which

Ms. Jackson's actions – In addition to the letter mentioned above, Ms. Jackson sent Ms. Wilson numerous follow-up emails over the next three months informing Ms. Wilson that she needed to move out. Ms. Jackson is the landlord of the property where Ms. Wilson and Mr. LaRoque resided. She has the ultimate authority to decide who she rents to, what the terms of a rental agreement will be and whether or not she will evict a tenant. This investigation believes that Ms. Jackson's initial action on March 30, 2010, sending Ms. Wilson a letter stating that she needs to move in 30 days, constitutes an adverse housing action. Additionally, all the emails following the March 30, 2010 email and up to the time Ms. Wilson was behind in her rent also constitute part of the adverse housing action.

Whether the adverse housing action was due to Ms. Wilson's membership in a protected class

Ms. Jackson's March 30, 2010 notes given to Ms. Wilson, stated that she had 30 days to move. The notes clearly indicate that Ms. Jackson took this step because of the alleged noise the child was making. The note also indicates that she considered the noise to be normal for children. Ms. Jackson wrote the following, "But I guess that is what kids do" (referring to the child running around). Ms. Jackson's 3/30/10 notes were the starting point of Ms. Jackson's efforts to force Ms. Wilson to move. There is no evidence in the March 30, 2010 note that the complained about noise was over and above normal "kid noise" or that the complained of noise was anything other than noise from the grandchild. There is no credible evidence that there was an attempt by Ms. Jackson to resolve the alleged noise issue. It appears to this investigation that Ms. Jackson chose to believe Mr. LaRoque's

version of the letter. It is clear that all versions were delivered to Ms. Wilson on or around March 30, 2010.

version of the situation and she then moved very quickly to attempt to remove Ms. Wilson from her apartment.

Mr. LaRoque later alleged that there was horribly loud day-and-night screaming by the grandson. This noise cannot be substantiated or disproven. Mr. LaRoque's subsequent allegations that Ms. Wilson screamed at her grandson, walked loudly and played loud music, were again adopted by Ms. Jackson as true but the only evidence of this is Mr. LaRoque's statements. Even if true, the later allegations of the type of noise coming from Ms. Wilson's apartment, do not negate the fact that the original noise complaints that lead to Ms. Wilson being told by Ms. Jackson that she had to move, were due to the noise allegedly being made by her grandson.

This investigation believes that Ms. Jackson caused Ms. Wilson to experience an adverse housing action due to Ms. Wilson's membership in a protected class and that Ms. Wilson has proven all the elements of a *prima facie* case. A "Plaintiff's burden of proof in the prima facie case is minimal. . . . The Court of Appeals for the Second Circuit has repeatedly called it 'de minimis.'" Boulton v. CLD Consulting Engineers, Inc., 175 Vt. 413, 421 (2003) *citing*, Carpenter v. Cent. Vt. Med. Ctr., 170 Vt. 565, 566, 743 A.2d 592, 595 (1999).

Once the charging party has proven a *prima facie* case, demonstrating differential treatment, a presumption/inference of illegal discrimination is created and the burden shifts to the respondent "to articulate some legitimate, nondiscriminatory reason" for his/her treatment of the charging party. McDonnell Douglas Corp. v. Green, 411 U.S. 792 S. Ct. (1973).²² If the respondent "articulates a clear and reasonably specific" nondiscriminatory reason for his/her action

²² In evaluating fair housing cases based on circumstantial evidence, the courts have applied the McDonnell Douglas model developed by the Supreme Court under Title VII (employment) cases. Robert Schwemm, "Housing Discrimination – Law and Litigation" §10:2 (2008).

the initial inference of discrimination disappears and the burden shifts back to the charging party to present evidence of the pretextual nature of the respondent's stated reason. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 258 (1981). The charging party must convince the fact finder that it is more probable than not that the respondent's adverse housing action(s) was motivated by an illegal discriminatory factor(s). *Adapted from* U.S. Postal Services Bd. Of Governors v. Aikens, 460 US 711 (1983).

Ms. Jackson told this investigation that she originally attempted to evict Ms. Wilson because Ms. Wilson did not "live up to the agreement" they had made. The "agreement" allegedly was that Ms. Wilson and her grandson would be away from the apartment most of the time during the week (she at school and the grandson in daycare.) Additionally, Ms. Jackson stated that when Ms. Wilson and her grandson were home the grandson would be in a playpen.

First, it is unclear whether or not Ms. Jackson and Ms. Wilson had an agreement regarding how much time Ms. Wilson and her grandson would be at home. Second, even if they had such an agreement it does not negate the fact that the 3/30/10 note Ms. Jackson presented to Ms. Wilson identified the grandson's noise as the reason she was instructing Ms. Wilson to move out within 30 days.²³ This investigation does not believe that Ms. Jackson has offered a legitimate nondiscriminatory reason for her adverse housing action.

Conclusion

²³ Since there is no credible evidence as to whether or not there was a pre-tenancy agreement between Ms. Jackson and Ms. Wilsons this investigation does not need to decide on the legality of a landlord attempting to enforce this type of alleged agreement. However, HRC does not believe an agreement confining a child to a playpen or dictating that the child must be in daycare everyday would be enforceable and it could well violate fair housing law.

In any case it is clear that Ms. Wilson was subjected to different terms and conditions of tenancy due to the presence of her minor grandson.

PRELIMINARY RECOMMENDATION:

This investigation report also recommends that the Human Rights Commission find that there are reasonable grounds to believe that Ms. Jackson discriminated against Ms. Wilson in violation of 9 V.S.A. §4503(a)(2) and (3) of Vermont's Fair Housing and Public Accommodations Act.

Ellen T Maxon, Investigator

Date

Approved by:

Robert Appel, Executive Director

Date

Appendix A

4/1/10 – 5:00 PM - LaRoque to Wilson - "I hear him running and it is pretty loud down her(sic) ☺ and like right now its like he is just pounding his feet on the floor . . .it is simple kid fashion . . can't tie him up." – 6:00 PM – Wilson to LaRoque – "he is in bed watching

cartoons that's my big booty walking thru between living room and kitchen doing my homework, he isn't talking or banging anything and hasn't for the last couple of hours,,, lol."

4/6/10 – Jackson to Wilson (cc LaRoque)²⁴ – Jackson stated "hopefully you have found another place or lined something u" – people are calling about wanting the apartment - also a reminder about utilities due.

4/7/10 – 10:30 AM Jackson to Wilson (cc LaRoque) stating that a potential tenant, wants to see the apartment today at 3:30 – Ray is going to meet him first. Jackson then refers to a cell phone conversation with Wilson regarding Wilson moving by end of the month. Also refers to Ray's health and states that Wilson had assured her that she and the child would be gone all day long and very quiet. "Ray cannot tolerate the noise and disturbance upstairs" with Wilson and "child there 24/7."

6:00 PM – Wilson requests that Jackson not contact her via email any more – Wilson requests the Jackson only use snail mail to contact her. Wilson also states she is "not involving Ray due to his request to not be in the middle." – 6:30 PM – Jackson writes that she there is a single man that came over to the apartment today and he wants it – Jackson states that she told him he could have it as soon as she (Wilson) moves out. 6:47 – LaRoque to Jackson (Wilson was not part of this exchange originally but the exchange was sent to her as part of a later email that LaRoque sends to Wilson at 8:57 AM on 4/8/10) – "Brian (the potential tenant) is a nice young man Rose . . . and knows how it needs to be here . . and agrees with it all too. . . I vote for him!" – 7:26 PM – Jackson to LaRoque – Jackson tells LaRoque she will proceed as if Wilson is moving out and that if LaRoque agrees she will

²⁴ Seven of the nine sent from Ms. Jackson to Ms. Wilson were also copied to Mr. LaRoque.

tell Brian he is "#1" – 7:26 – LaRoque to Jackson – "Oh I agree . .he is a straight cut guy..."

4/8/10 – 8:57 AM – LaRoque to Jackson – "Alexia will bring me the utilities and a rent payment . . ." "I do not want to get involved in money collection. I will do it this time but in the future, if it goes this distance you and Alexia will have to work a payment plan."

4/16/10 - 5:20 PM – LaRoque to Wilson – "Have you decided not to try and keep things a bit quieter up there? It seems that there is so much more noise coming from up there this week then (sic) at anytime you have been here! I am not sure who is making all the noise but it is so loud down here and at times some of the noise is down right startling! Didn't you tell me that Anthony was going in a day care Monday and you had studying or something and things would be quiet? I would really appreciate it if you could try to be mindful you have a tenant below you."

4/20/10 – 7:532 PM – Jackson to Wilson – regarding late rent and a request to give the money to Ray ASAP, LaRoque "agreed to do this just this once" – "Ray has never complained about noise until" you moved there. "He said that sometimes, the yelling, screaming and heavy walking and running it (sic) too much to put up with. It is unbelievable that you are so insensitive to the needs of others since you are supposed to be a health professional." 11:30 PM – Jackson to LaRoque and Wilson – Jackson refers to a verbal agreement that she had with Wilson regarding Ray's need for quiet because of his health – includes alleged promises from Wilson that she would be in school and grandson in daycare – states that when Wilson arrived things were not that way and she and grandson were in apartment 24/7 – Jackson suggests that Wilson needs to move to a downstairs apartment and

that it is unacceptable for her to continue living in Jackson's apartment.

4/29/10 – 2:45 PM - Jackson to Wilson (cc LaRoque) – regarding money owed for utilities – asks how the relocating is coming as she gets daily calls for the apartment – asks about the noise level and states “Ray is still hearing too much from your apartment day and night.”

5/3/10 – 7:45 PM – Jackson to Wilson (cc LaRoque) – regarding nonpayment of rent and inquiring about whether or not Wilson has found another apartment – asks if Wilson has attempted to reduce the noise – states that LaRoque claims he is sometimes awoken suddenly by loud noise and that the disturbance has been continual day and night.

5/6/10 – 5:00 PM – Jackson to Wilson (cc LaRoque) – Jackson states she has been contacted by Vermont Housing and that she told them Wilson would do better in a downstairs apartment – she states this is nothing personal or against the child – there is just too much noise “for someone who has been so ill” – hopes Wilson finds a place soon and asks if she is current with paying Ray for the trash collection.

5/7/10 – 4:35 PM – Jackson to Wilson (cc LaRoque) – Verifies that she received May's rent however states that Wilson still owes \$250 for utilities – again asks if Wilson has paid LaRoque for the trash.

6/14/10 – 11:00 AM – LaRoque to Wilson – LaRoque informing Wilson that her being behind in utilities affects him because he pays the utilities bill and Jackson then reimburses him when she receives payment from the upstairs tenant – he also informs Wilson that when she is behind on the rent it affects Jackson – closes with “Why are you not paying what you owe?”

6/30/10 – 12:00 PM – Jackson to Wilson (cc LaRoque) – a response to Wilson informing Jackson that the electricity has been going out because the breaker is too small (per LaRoque) – Jackson says she is working on it but that the problem must be that Wilson is overloading the system – she also asks about past due rent